

May 20, 2019

Mr. Devin Leary  
Human & Rohde, Inc.  
512 Virginia Avenue  
Towson, Maryland 21286

Re: Hillshire Overlook  
Hillshire Road  
Dundalk, Maryland 21222  
Forest Conservation Special Variance  
Tracking # 07-19-2984

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33, Title 6, Forest Conservation, was received by the Department of Environmental Protection and Sustainability (EPS) on April 25, 2019. This request proposes to remove 13 specimen trees in order to develop an 18-lot residential subdivision. The subject property is located at the terminus of Hillshire Road, south of German Hill Road, in the Dundalk section of Baltimore County. Surrounding land uses include single-family residential homes to the west, a commercial florist to the north, and Holy Rosary Cemetery to the east and south. Much of the flat to moderately-sloped topography has been altered over many years due to prior uses, unregulated dirt bike trails and unauthorized dumping. Vegetation on the 4.4 acre site consists of 3.6 acres of early to mid-successional forest, with 20 specimen trees scattered throughout the site, located within, and outside of the forest. No wetlands, streams or floodplains occur on, or adjacent to the property.

Thirteen of the 20 specimen trees are proposed to be removed. Of the 13 trees to be removed, 11 are located within forest and/or are in poor condition, therefore, mitigation for the removal of these trees will be satisfied by the 2.5-acre reforestation requirement. Two specimen trees to be removed are located outside of forest (Trees #11 and #20) and mitigation is proposed. Seven trees are to be retained, including 1 specimen tree located on the eastern property boundary with the cemetery. An alternate development layout was submitted with this variance request that proposes the removal of 17 specimen trees of the 20 on site. Design reconfigurations were considered and included, which reduced

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the number of specimen trees to be removed to 13, resulting in the preferred layout, which was reviewed for this variance request.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The specimen trees are scattered throughout the property and not in one central location, making it difficult to develop the property without impacting some of the existing forest resources. We acknowledge that the inability to impact specimen trees would limit development of the site, however, we also acknowledge that if the requirement from which this variance is requested is imposed, it would not deprive the petitioner of all beneficial use of his property, therefore, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The surrounding neighborhood land uses consist of residential lots of similar density. The plight of the petitioner is due to the unique circumstances of the scattered nature of the specimen trees on the property, and successful efforts have been made, through design revisions, to reduce the quantity of specimen trees to be removed from 17 to 13. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The essential character of the neighborhood consists of single-family residences in the vicinity of a commercial florist and a large cemetery. The proposed residential development will not alter this character. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. We have determined that there are no wetlands, streams or floodplains on or immediately adjacent

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the property. Stormwater management engineering and sediment and erosion control devices will be utilized. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any related actions on the property prior to requesting this variance. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Per the approved, preliminary Forest Conservation Plan, the reforestation requirement is 2.5 acres, with mitigation to be addressed by the purchase of credit at an EPS-approved forest conservation planting bank, if available, or by the payment of a fee-in-lieu of planting in the amount of \$0.55 per square foot. In addition, mitigation for the removal of 2 specimen trees must be based upon 25% of the critical root zones (CRZ) at \$0.55 per square foot. Given that modifications to the design layout were made to reduce specimen tree impacts, no impacts to wetlands, streams or floodplains are proposed, and reforestation and specimen tree mitigation is required, we find that this proposal would be consistent with the spirit and intent of the Forest Conservation Law. Therefore, this criterion has been met.

Based on our review, this Department finds that all of the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. A final Forest Conservation Plan (FCP) is required prior to approval of the grading and sediment control plans. The FCP will include a reforestation requirement of 2.5 acres, as stipulated above. The FCP will include mitigation for the removal of two specimen trees, as follows, based upon 25% of the area of the critical root zones, at \$0.55 per square foot: Tree#11: isolated southern red oak (*Quercus falcata*), 40-inch DBH, CRZ radius 60 feet; Tree #20: isolated willow oak (*Quercus phellos*), 40-inch DBH, CRZ radius 60 feet.
2. All mitigation requirements must be satisfied prior to the issuance of any permits.
3. Include the following note on all future plans for this project: "A Forest Conservation Special Variance was granted by the Baltimore County Department of Environmental Protection and Sustainability to allow the removal of 13

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specimen trees. Mitigation for 2 of the 13 trees located outside of the forest was addressed by the payment of a fee-in-lieu of planting, as stated on the approved Forest Conservation Plan.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request. Please have the property owner(s) sign the statement below and return a signed copy of this letter to this Department prior to issuance of any permit. If there are any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Director

DVL/tcp

I/we agree to the above conditions to bring the referenced property into compliance with Baltimore County’s Forest Conservation Law.

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Signatures(s) of Property Owner(s)

Date

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Property Owner’s Printed Names

HillshireOverlookFCVA.SpecTrees5.20.19.doc/sheir/TCP